

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LAURA J FOY
Claimant

**AL'S CORNER OIL COMPANY
SPARKY'S ONE STOP**
Employer

APPEAL NO: 11A-UI-00291-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/21/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 15, 2010, reference 03, that held she was discharged for misconduct on November 22, 2010, and benefits are denied. A telephone hearing was held on February 4, 2011. The claimant did not participate. Cindy Tiefenthaler, Operations Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time clerk on November 9, 2009, and last worked for the employer on November 22, 2010. The employer issued claimant a written warning on July 19, 2010 for being a no-call/no-show to work on July 18 and 19. The employer issued claimant a final written warning for being a no-call/no-show for meetings on October 22 and 23.

The employer terminated claimant on November 22, 2010 for being a no-call/no-show to work on November 20 and 21. The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 22, 2010.

The employer warned claimant her job was in jeopardy due to a failure to call in and report for work. Her continuing violations for the same offense constitutes job disqualifying misconduct.

DECISION:

The department decision dated December 15, 2010, reference 03, is affirmed. The claimant was discharged for misconduct on November 22, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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